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NO. 83677-9

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

CITY OF SEATTLE

Respondent,

v.

ROBERT MAY,

Petitioner,

PETITIONER'S MOTION TO STRIKE

CHRISTINE A. JACKSON
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A. IDENTITY OF MOVING PARTY

Petitioner Robert May moves for relief requested in Section B.

B. RELIEF REQUESTED

May moves to strike Section C(3) of the Supplemental Brief of Respondent because it raises an issue beyond the scope of the review granted by this court. In the alternative, May requests leave to respond to the City's supplemental brief.

C. STATEMENT OF FACTS RELEVANT TO MOTION

This court granted review of May's petition seeking review the decision in *City of Seattle v. May*, 151 Wn.App. 694, 213 P.3d 945 (2009).

That decision affirmed May's conviction for misdemeanor violation of a domestic violence protection order. The court of appeals rejected May's challenge to the applicability of the protection order, holding that the threshold finding for a permanent order issued pursuant to RCW 26.50.060(2) need not appear on the face of the order and that May received adequate notice that he could be charged under the broader Seattle Municipal Code. May, 151 Wn.App. at 698, 699.

The City's opening brief was quite short, barely 6 pages and did not discuss the collateral attack issue. The City discussed the collateral

attack issue extensively in its reply brief to which May did not get to file a written response. The court of appeals rejected the City's argument that May's challenge to the order was a collateral attack. May, 151 Wn.App. at 698, note 9.

May's petition for review presented two issues: whether the issuing court made the threshold finding necessary to authorize a protection order for longer than one year and whether May received fair notice that he could be prosecuted under the Seattle Municipal Code, as opposed to the narrower state law. Petition for Review, at 1-2. May's petition did not address the collateral attack issue as he prevailed on that issue. This court granted review on February 10, 2010. The order granting review did not identify any issues in addition to those contained in the petition.

The parties filed supplemental briefs on April 4, 2010. In its supplemental brief, the City asserts that May's challenge to the applicability of the predicate protection order is an impermissible collateral attack. Supplemental Brief of Respondent C(3), at 7-12.

D. AUTHORITY AND ARGUMENT FOR RELIEF REQUESTED

The scope of discretionary review in this court is governed by RAP

13.7(b). Review is limited to “the questions raised in . . . the petition for review and the answer, unless . . . the Supreme Court orders otherwise upon the granting of the motion or petition.” RAP 13.7(b). This court will generally not consider issues raised in the supplemental briefs outside the scope of review. See State v. Korum, 157 Wn.2d 614, 624, 141 P.3d 13 (2006) (granting Korum’s motion to strike issues not included in the State’s petition for review); State v. Kirkpatrick, 160 Wn.2d 873, 880, 161 P.3d 990 (2007) (Kirkpatrick’s motion to strike the State’s argument based on RAP 2.5 was denied because he addressed the applicability of that rule in his petition and that rule can be raised by the court *sua sponte*); State v. Gossage, 165 Wn.2d 1, 6, 195 P.3d 525 (2008) (granting Gossage’s motion to strike the State’s brief on the appealability of the trial court’s order because the issue as the State failed to file an answer or cross-petition).

Here, May did not discuss whether his challenge to the predicate protection order was a collateral attack in the petition, as he prevailed on that issue below. The City failed to file an answer or cross-petition raising this issue. Thus, May respectfully asks this court to strike the portion of the City’s supplemental brief which raises this issue, Section

C(3) of the Supplemental Brief of Respondent. In the alternative May
seeks leave to respond to the City's supplemental brief on this issue.

Respectfully submitted this 12th day of April, 2010,

Christine A. Jackson WSBA #17192
Attorney for Petitioner

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Please find attached Petitioner's Motion to Strike a portion of the City's brief.

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